



IN THE MATTER OF:

Complainant,

and

Respondent.

ALS NO: S-11424

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On November 15, 2001 a public hearing was held in Mt. Vernon Illinois. The parties thereafter filed their post-hearing briefs.

Complainant asserts that she was the victim of race discrimination when she received a \$.35 per hour raise in July of 1999 while similarly situated co-workers outside her protected classification received higher raises. Respondent, however, submits that Complainant cannot establish a *prima facie* case of race discrimination since her proffered comparable co-workers are not similarly situated to Complainant. It also contends that the Complainant's co-workers received larger raises based on factors other than her race.

Based on the record in this matter, I make the following findings of fact:

1. In July of 1988, Respondent hired Complainant, a black female, in the position of production worker.

2. At all times pertinent to this Complaint, Respondent operated a manufacturing plant that made surveying equipment. Respondent required that its employees perform between 100 to 200 different functions, such that employees generally did not perform the same tasks or functions each day, but rather were assigned work according to the requirements of pending customer orders.

3. At all times pertinent to this Complaint, Respondent employed a compensation system that paid production workers a standard salary plus an opportunity to receive incentive pay on certain jobs that had been rated by Respondent. When a production worker was performing a job that entitled the worker to incentive pay, Respondent considered such work to be "direct" work. All other assignments were considered by Respondent to be "indirect" work that earned for the production worker only his or her base rate of pay.

4. In February of 1994, Respondent hired Bill Baker, a Caucasian male, as a production worker.

5. In April of 1996, Respondent hired Wanda Austin, a Caucasian female, as a production worker.

6. In May of 1996, Respondent hired Martha Clark, a Caucasian female, as a production worker.

7. By June of 1998, Respondent had assigned its production workers to perform approximately thirty-seven jobs having different degrees of difficulty. By this time, Complainant had requested management not to assign her to jobs located in certain areas of the plant because the chemical smell at these locations bothered her.

8. From July of 1998 through June of 1999, Complainant was assigned the following tasks: (1) "catch sections"; (2) "sub assemble"; (3) "drill tip caps"; (4) "rack"; (5) "unrack"; (6) "extraction"; (7) "bracket pad print"; (8) "bracket assembly"; (9) "small part

assembly”; and (10) “janitorial”. During the same period of time Wanda Austin was assigned a “janitorial” that did not provide any opportunity for incentive pay.

9. From July of 1998 through June of 1999, Bill Baker was assigned the following tasks: (1) “rack”; (2) “unrack”; (3) “cut pattern”; (4) tack resin; (5) roll mandrel; (6) “extraction”; and (7) “warehouse”. Throughout this time, Baker’s assignments generally provided him with opportunities to earn incentive pay. However, in June of 1999, Baker was transitioning into a full-time warehouse position, which did not provide him opportunities to earn incentive pay.

10. From July of 1998 through June of 1999, Martha Clark was assigned the following tasks: (1) “wipe down screen”; (2) “catch sections”; (3) “packout” for two different products; (4) “punch and drill”; (5) “sub-assemble” for two different products; (6) “cut spacers”; (7) “stacking kits”; (8) “rack”; (9) “unrack”; (10) “extraction”; and (11) “assembly.” Throughout this time Clark’s assignments required that she work in some of the areas that Complainant had requested that she not be assigned. Clarks also had opportunities to earn incentive pay.

11. On October 27, 1998, Mary Zeschke, a supervisor, documented an incident in which she perceived Complainant to have displayed a hostile attitude towards her after giving her a job assignment. Zeschke spoke with Complainant who claimed that she had an unspecified work related problem. Zeschke advised Complainant that she needed to do something about her attitude problem which had been occurring every two to three months.

12. On June 16, 1999, Jeff Oathout (Respondent’s operations manager) had a discussion with Complainant about her attitude and about her unwillingness to speak with him even when directly spoken to. During the conversation, Oathout indicated that for several weeks Complainant had failed to make eye contact or acknowledge that anything had been said to her, and that she needed to improve her communication skills. At the

end of the meeting Complainant and Oathout agreed to try to not let the situation occur again.

13. In June of 1999, Respondent's president, Steve Crain, directed each manager (Jessie Cannon [an African-American], Oathout [a Caucasian] and Anthony Dover [a Caucasian]) to rate each production employee in a number of different areas, reach a consensus, and prepare a spreadsheet containing these ratings for Crain's consideration in granting pay raises to the production workers. During this process the three managers assigned numbers in areas of cooperation, dependability, initiative, quality and quantity, as well as assigned numbers to the various jobs performed by the production workers, with a range between, one, which was given to relatively simple or less critical functions of the operations, and ten, which was given for the most difficult or important functions.

14. At the end of the rating process, the three managers gave Complainant a total score of 23 for her job assignments in terms of job difficulty/importance, and an overall score of 46 after adding scores for the remaining factors of cooperation, dependability, initiative, quality and quantity. The managers also gave Complainant a "3" for the one of the jobs performed by Complainant, and gave 2s and 1s for the remaining jobs performed by Complainant. The managers gave Wanda Austin a score of 6 on job difficulty/importance, and an overall score of 36 for the remaining factors. The janitorial job performed by Austin was rated a 1 in terms of job difficulty/importance. The managers gave Bill Baker a score of 20 on job difficulty/importance, and an overall score of 36 for the remaining factors. The managers gave Bill Baker a 4 as to the difficulty/importance of the part-time warehouse position, as well as 3s, 2s, and 1s on his remaining tasks. The managers gave Martha Clark a score of 38 on job difficulty/importance and an overall score of 62 on the remaining factors. The managers gave Clark a 5 on one task, a 4 on two tasks, and either a 3, 2, or 1 on the remaining tasks.

15. At all times pertinent to this Complaint, Respondent kept an efficiency rating for each production worker that measured the productivity of the worker on “direct” work assignments against the company standard, as well as the percentage of time that the worker spent on “direct” work projects. During the first quarter of 1999, Complainant had an efficiency rating of 163% while doing direct work 19% of the time. Baker had an efficiency rating of 121% while doing “direct” work 55% of his time. Clark had an efficiency rating of 148% while doing “direct” work 72% of her time. Austin had no efficiency rating because she did not do any “direct” work in her role as janitor. The efficiency ratings measured only output of product and not quality of what was being produced.

16. During the second quarter of 1999, Complainant had an efficiency rating of 159%, while doing “direct” work 17% of her time. During this same time period, Baker had an efficiency rating of 103%, while doing “direct” work 56% of his time. Clark had an efficiency rating of 124%, while doing “direct” work 78% of her time. Austin had no efficiency rating during this time.

17. After the ratings for all production workers were given to Crain, Crain gave raises based on the scores generated by the three managers, but also based on Crain’s perception of the worker’s relative marketability in the job market, the worker’s job skills in relation to Respondent’s future plans, as well as the worker’s trainability, aptitude, willingness to do other work, existing pay rate, and any change of duties. In using these factors, Crain gave Complainant a \$.35 per hour raise to \$8.75 per hour. He also gave: (1) Austin a \$.35 per hour raise to \$7.85 per hour; (2) Baker a \$.45 per hour raise to \$8.85 per hour; and (3) Clark a \$.55 per hour raise to \$8.30 per hour.

18. On August 18, 1999, Complainant sent a memorandum to Crain and the three managers asserting that she had “serious issues” in the workplace. Among the issues was her contention that she was the victim of “silent discrimination and prejudice

(not racial)” and that, with respect to her recent pay raise, Oathout had told her that she was not putting out enough production in the bracket section due to lack of work.

19. At all times pertinent to this Complaint, Respondent employed 50 production workers. Of these workers, 23 were black and 27 were Caucasian.

### **Conclusions of Law**

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent is an “employer” as that term is defined under the Human Rights Act and is subject to the provisions of the Human Rights Act.

3. Complainant established a *prima facie* case of race discrimination in that Respondent gave a larger raise to an individual outside Complainant’s protected classification who was performing similar work.

4. Respondent articulated a legitimate, non-discriminatory reason for its decision to grant Complainant a certain pay raise, while granting other co-workers different pay raises.

5. Complainant failed to prove by a preponderance of the evidence that the reasons given for either her pay raise or the pay raises given to other co-workers were pretexts for race discrimination.

### **Determination**

Complainant failed to prove by a preponderance of the evidence that Respondent violated section 2-102 of the Human Rights Act (775 ILCS 5/2-102) when it granted Complainant a \$.35 per hour pay raise.

### **Discussion**

In a case alleging discrimination on the basis of race, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Illinois Human Rights Act. (See, for example, **Loyola University v. Human Rights**

**Commission**, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1<sup>st</sup> Dist., 3<sup>rd</sup> Div. (1986), and **Harris and The Northern Trust Company**, 44 Ill. HRC Rep. 88 (1988).) Under this approach, the complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its action taken against the complainant. If the respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (**Texas Department of Community Affairs v. Burdine**, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)), and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated non-discriminatory reason is a pretext for unlawful discrimination.

As with any case of alleged unequal treatment based on race, the elements of a *prima facie* case of discrimination will vary according to the specific claim. Generally, the elements of a *prima facie* case of discrimination require that a complainant establish that: (1) she is a member of a protected class; (2) she suffered a material adverse action; and (3) similarly situated co-workers who are not members of the protected classification were treated better than Complainant. (See, for example, **Toney and Interventions and Secretaries, Inc.**, 52 Ill. HRC Rep. 376 (1989).) Respondent does not essentially quarrel with Complainant's contention that she established the first two elements of this *prima facie* formula, but disputes Complainant's assertion that she satisfied the third element of the *prima facie* case since, according to Respondent, none of the three alleged comparables had jobs that required substantially equal skill, effort, and responsibility to the jobs performed by Complainant. See, for example, **McCullar v. The Human Rights Commission**, 158 Ill.App.3d 1011, 511 N.E.2d 1375, 111 Ill.Dec. 80 (4<sup>th</sup> Dist. 1987).

Under Complainant's theory, all three proposed comparables (Clark, Austin, and Baker) are similarly situated since Respondent viewed all three co-workers as "production" workers, and all three were evaluated by the same supervisors using the

same criteria. Moreover, Complainant submits that while she did not perform all of the tasks done by the proposed comparables, the Commission has never required the existence of “precise equivalence” between workers in order to establish a *prima facie* case of discrimination. (See Loyola University v. Human Rights Commission, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1<sup>st</sup> Dist., 3<sup>rd</sup> Div. (1986).) This is especially true in our case, Complainant insists, because Complainant’s jobs had similar ratings in terms of importance and difficulty to the jobs performed by her proposed comparables.

However, I agree with Respondent that Martha Clark serves as a poor comparable for Complainant’s *prima facie* case of discrimination. Specifically, in examining the rankings used by Complainant’s supervisors, I note that Clark scored significantly higher on job difficulty/importance (i.e., 38 to 23) and on the overall factors (i.e., 62 to 46), thereby indicating that Clark was actually doing more complex tasks and doing them in a more satisfactory manner than Complainant. Moreover, Clark’s efficiency ratings demonstrate that she was spending a significant part of her day (i.e., 72%) doing “direct” work, while Complainant was spending 19% of her time doing “direct” work assignments. This difference in skill level and time spent on “direct” work supports Respondent’s claim that Clark is essentially a different worker doing a different job than Complainant.

Complainant, though, is more on the mark when she compares herself to Bill Baker, who had fewer points in job difficulty/importance (i.e., 23 to 20) and overall factors (i.e., 46 to 36). Respondent, though, submits that Baker was not a comparable employee because he was transitioning into a full-time warehouse position that did not offer any opportunity for incentive pay. However, Respondent concedes that the transition did not occur until the end of the evaluation period in June of 1999, and the other job/difficulty tasks that Baker did perform were similar in nature to what Complainant was doing. Indeed, there is nothing in this record to indicate how much time Baker actually spent in the warehouse during the relevant period between July of 1998 and June of 1999. Thus,



it is enough to say that the similarity of jobs during the majority of the evaluation period, as well as Baker's lower scores, require that Respondent provide an explanation as to why Baker received a higher raise than Complainant.

The circumstances surrounding Austin's job is a closer case. While it is true that Austin performed primarily janitorial jobs that had no opportunity for incentive pay, Complainant also was required to do janitorial tasks when Austin was not available. Indeed, although Austin and Baker received the same \$.35 per hour raise, one would expect that Austin would have received a lower raise given the fact that Complainant had significantly better scores on job difficulty/importance (i.e., 23 to 6) and overall factors (i.e., 46 to 36). Thus, for all of the above reasons, I find that Complainant has established a *prima facie* case of race discrimination at least with respect to the raises given to Baker and Austin.

As to Respondent's articulation with respect to Baker, Steven Crain, Respondent's President, testified that Baker was given a \$.10 per hour greater raise than Complainant because Baker was going to manage full-time the inventory of the warehouse, which was an extremely important job to Respondent. As to the amount of Austin's pay raise, Crain asserted that although Austin's job duties in her janitorial work were not as skilled as Complainant's, Austin was a better worker than Complainant. Moreover, Crain stated that he consistently gave raises in lesser amounts to those individuals like Complainant who were at the higher end of the pay scale. As such, these articulations of Respondent provide me with a neutral, non-discriminatory reason for its treatment of Complainant, and that Complainant has not argued that the proffered reasons, if they actually motivated Respondent, are insufficient to meet Respondent's burden under **Burdine**. As a result, Complainant is now required to show by a preponderance of the evidence that the reasons proffered by Respondent were not the true reasons underlying its decision to give

Complainant only a \$.35 per hour raise, and that the Respondent's articulations are only pretexts for race discrimination.

As to the pretext issue, a complainant may establish pretext for unlawful discrimination either directly, by offering evidence that a discriminatory reason more likely motivated the respondent's actions, or indirectly, by showing that the respondent's explanations were not worth of belief. (See, for example, **Burnham City Hospital v. Illinois Human Rights Commission**, 126 Ill.App.3d 999, 467 N.E.2d 635, 81 Ill.Dec. 764 (1984).) A complainant may discredit a respondent's justification for its actions either by demonstrating either that: (1) the proffered reasons had no basis in fact; (2) the proffered reasons did not actually motivate the decision; or (3) the proffered reasons were insufficient to motivate the decision. See, for example, **Grohs v. Gold Bond Products**, 859 F.2d 1283 (7<sup>th</sup> Cir. 1988).

Here, Complainant does not assert any direct evidence of race discrimination on the part of Crain, but contends that she should have been given a higher raise in light of the scores given to Austin and Baker by Complainant's supervisors, as well as production figures indicating that she produced at higher efficiency rates than Baker or Austin. However, the statistics cited by Complainant did not necessarily reflect overall productivity of a production worker. Specifically, during the first and second quarters of 1999 Complainant spent only 19% and 17% of her time doing "direct" work, while Baker spent 55% and 56% of his time doing "direct" work. Given Crain's undisputed claim that efficiency numbers generally decreased as workers spent a greater percentage of time on direct work, Complainant cannot accurately extrapolate that she was the more efficient worker based solely on her limited time doing "direct" work assignments.

Complainant's reliance on the efficiency numbers is troublesome for a second reason because the efficiency numbers do not account for what she did during the other eighty percent of time that she worked for Respondent. Moreover, although Complainant

argues that she was just as efficient while performing “non-direct” tasks, there is no objective evidence to back up her claim, and I note that, unlike Baker or Austin, Complainant had issues with her supervisors regarding the assignments of non-direct work during this time frame. Thus, what Complainant must really be arguing is that she was entitled to a greater wage rate based solely on what Respondent’s supervisors assessed her work, and that Crain did not actually consider the other aspects such as worker marketability, existing pay rate and potential for incentive pay when determine specific amounts of pay raises. Unfortunately for Complainant, she failed to provide any evidence that Crain actually limited his consideration to raw efficiency figures when determining levels of raises.

For example, Crain explained that Austin received her \$.35 per hour raise because she had scored very high on the important dependability and cooperation factors in a job market where, in his experience, there were not many janitors who demonstrated Austin’s level of dependability and cooperation. However, in order to prove pretext, Complainant would have to show either that Austin’s scores in these areas were knowingly elevated, or that her own scores were knowingly deflated. Here though, Complainant provided no evidence to dispute either her own scores or the scores of Austin on the dependability and cooperation factors, and Complainant further failed to show that Austin had the same run-ins with management that she had during the relevant evaluation period.

Additionally, Complainant fails to address in her pretext argument Crain’s contention that her raise was based in part on her existing salary. Specifically, Crain contended that production workers with relatively high salaries did not receive relatively high raises since, in his view, a production worker could only make a finite amount of money in the position regardless of how well the worker was performing the job. Complainant cites no example of where a production worker at the high end of the salary scale received a large raise, and Crain’s contention in this regard is borne out by the

record where, for example, John Cross, a black production worker, and Mary Taylor, a Caucasian production co-worker, received the same \$.35 per hour raise from their existing \$9.90 per hour salaries. Thus, while it is true that workers at the higher end of the salary scale may have been short-changed in terms of obtaining a larger raise when compared to their lower paid co-workers, the decrease in the amount of raises had nothing to do with the race of the co-worker, but rather on the economic realities of the position. In any event, Complainant actually fared better than Austin in terms of earning opportunity since not only did she earn an over-all higher wage than Austin, she also had the opportunity to obtain incentive pay.

Finally, I note that the Commission in **Vidal and St. Mary's Hospital of East St. Louis**, \_\_\_ Ill. HRC Rep. \_\_\_ (1985SF0343, August 1, 1995), focused on the “demanding nature” of proof that is necessary to establish pretext when a complainant is attempting to compare similar events and work records. Here, while I found that the circumstances surrounding Austin’s pay raise were such that it required Respondent to articulate a reason for her \$.35 per hour raise, I further find that Complainant has not met her burden at the pretext stage of the case of showing that race discrimination was the likely source of Crain’s decision to give Austin and Complainant the same wage increase. In short, Complainant loses on her pretext argument due to the differences between the job duties, Complainant’s ability to earn incentive pay, and most important, her failure to show that Crain did not honestly consider dependability and cooperation as strong factors in determining raises for production workers.

Complainant suffers a similar problem when trying to establish a race claim based on a comparison with the circumstances surrounding Baker’s job duties. In this regard Crain and others testified that while Baker received lower scores from his supervisors than Complainant, Baker was in the process of being transitioned into the full-time warehouse position at the time raises were being given. Accordingly, Crain asserted that Baker’s

\$ .45 per hour raise was made to reflect the fact that he was now being given important responsibilities in the warehouse, and that Baker would no longer be in a position that would give him the opportunity to earn incentive pay. Again, Complainant has no evidence to demonstrate that Crain did not honestly believe this explanation since the record reflects that Baker actually obtained the full-time warehouse position, and that Complainant's supervisor's actually rated the warehouse duties more highly than any of the duties Complainant performed.

Complainant, though, relies again on her production figures to argue that Baker's higher raise demonstrates a racial bias on the part of Crain since, according to Complainant, the most important aspect of Respondent's business is the production of finished products, rather than Baker's maintenance of the warehouse. However, as Crain testified, Baker's full-time warehouse position was an important one because it required that he supply raw materials to the production workers in order to produce the finished products. Hence, I cannot accept Complainant's premise that she deserved a higher raise because she did more important work than Baker. Indeed, judgments concerning relative worth of various jobs should be left to the employer since the Commission does not sit as a super personnel agency to modify legitimate decisions made by a business entity. (See, for example, **Tebrugge and City of Springfield, Illinois**, \_\_\_ Ill. HRC Rep. \_\_\_ (1991SF0092, October 17, 1995).) Here, Complainant's claim regarding relative worth would have been more credible had she provided evidence that any previous individual doing full-time warehouse duties made less money than Baker.

More problematic is Complainant's suggestion that Respondent cannot base a raise on Baker's future job duties. In this regard, Crain testified that he raised some salaries based, in part, on the assumption of different duties, and Complainant failed to provide any evidence either that the full-time warehouse position was similar to her piece-work, production job, or that Crain did not provide raises to individuals who assumed

different, or more important job functions. Thus, Complainant cannot show pretext arising out of Baker's raise since the rationale behind his raise was his assumption of a new job rather than the results he received on the ratings sheet generated by his supervisors.

Finally, Complainant submits that Respondent's over-all pattern of giving lower raises to black production workers demonstrates that her \$.35 per hour raise was racially motivated. The record, though, does not support this assertion since if one includes raises given to employees one month prior to the July 17, 1999 raise given to Complainant, black production workers received an average pay increase of \$.58 per hour while Caucasian production workers received an average increase of \$.60 per hour. Moreover, when one considers that Respondent employs 23 black production workers out of a workforce of 50 production workers, I find that the minimal, two cent difference in average raises cannot demonstrate that race played a factor in Complainant's pay raise.

#### **Recommendation**

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination of Joyce Bailey be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 7TH DAY OF NOVEMBER, 2002